

DECLARATION OF PETITION

SUPREME COURT OF THE UNITED STATES

IN THE DISTRICT COURT OF THE UNITED STATES FOR

THE DISTRICT OF COLUMBIA

GEORGE F. JONES, PLAINTIFF IN ERROR,

VS.

THE UNITED STATES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ALABAMA

FILED FEBRUARY 2, 1947

(10,483)

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(16,483.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 298.

GEORGE POUNDS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ALABAMA.

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1 UNITED STATES OF AMERICA, }
Northern District of Alabama. }

September Term, 1895.

Pleas had at a regular term of the district court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-room, in the city of Birmingham, in said division of said district, the first Monday of September, it being the second day thereof, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and twentieth year.

No judge being present, the court was opened by the marshal according to law.

Present: V. Lee Cowart, assistant U. S. attorney; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

The following order, being received from the judge, was duly read in open court, to wit:

"Judges' Chambers, United States District Court, Middle District of Alabama.

IN CHAMBERS, MONTGOMERY, ALA., *July 16th, 1895.*

John Bruce, judge.

Ordered, that the circuit and district courts of the United States for the southern division of the northern district of Alabama be, and the same are hereby, adjourned from Monday, the 2nd day of September, 1895, to Monday, the 16th day of September, 1895, and parties, witnesses, and jurors need not appear in said courts before that date, September 16th, 1895.

(S'g'd)

JOHN BRUCE, *Judge.*

Filed September 2nd, 1895.

(S'g'd)

N. W. TRIMBLE, *Clerk.*

2 Thereupon court was adjourned until Monday, September 16th, 1895, at 12 m.

MONDAY MORNING, *September 16th, 1895.*

Court met pursuant to adjournment.

Present: The Hon. John Bruce, district judge, presiding; Emmet O'Neal, U. S. district attorney; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

The grand jury as organized, sworn, and charged is as follows, to wit: Chambers M. McAdory, foreman; Fletcher W. Box, T. K. Wright, Reuben Lewis, John H. Keith, Isaac Wharton, J. W. Crowder, Chas. Stollenwerck, A. B. Hamlett, J. B. Graham, R. B. Posey, A. W. Latham, G. C. Gowdy, Jefferies Beount, Wm. A. Harvey, J. R. Miller, John F. Gardner.

THURSDAY MORNING, *September 26th*, 1895.

Court met pursuant to adjournment.

Present: Hon. John Bruce, district judge, presiding; Lee Cowart, assistant U. S. attorney; J. C. Musgrove, U. S. marshal, by J. McKee Gould, deputy, and N. W. Trimble, clerk.

Order for Clerk to File and Enter Indictments.

It was ordered by the court that the clerk file and enter upon the dockets of the court the indictments this day presented, and, in obedience to the order of the court, the said indictments were entered as follows:

3

UNITED STATES	}	No. 870. Illicit Distilling.
vs.		
GEORGE POUNDS.		

4

Indictment.

UNITED STATES OF AMERICA :

In the District Court of the United States for the Southern Division of the Northern District of Alabama, September Term, 1895.

The grand jurors of the United States, elected, empaneled, sworn and charged to enquire for the body of the southern division of the northern district of Alabama upon their oaths present: that on the 1st day of July A. D. 1895, in the said southern division of the northern district before the finding of this indictment, and within the jurisdiction of said court, in the county of Cleburne George Pounds did unlawfully have in his possession and custody, and under his control, a still and distilling apparatus set up without having the same registered as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did carry on the business of a distiller without having given bond as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States. And the grand jurors aforesaid, upon their oaths *af* aforesaid, do further present that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did engage in and carry on the business of a distiller, with intent to defraud the United States of the tax on the spirits distilled by him, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

5 The grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds who was engaged in carrying on the business of a distiller, defrauded, or attempted to

defraud, the United States of the tax on the spirits distilled by him, or of a part thereof, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

The grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid the said George Pounds unlawfully did remove and aid and abet in the removal of distilled spirits on which the tax had not been paid, to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

The grand jurors aforesaid upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did remove and aid and abet in the removal of distilled spirits from a warehouse for distilled spirits authorized by law, in a manner other than provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

The grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits, which had been removed from a warehouse for distilled spirits authorized by law, in a manner other than is provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did work in a distillery upon which no sign bearing the words "registered distillery" was placed and kept as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully and knowingly did carry and convey to wit: ten gallons or distilled spirits from a distillery on which no sign bearing the words of a "registered distillery" was placed and kept as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do

7 further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully and knowingly did carry and deliver grain, molasses and other raw material to a distillery on which no sign bearing the words "registered distillery" was placed and kept as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did make or ferment mash, wort or wash fit for distillation or for the production of spirits, or alcohol, in a building or on premises other than a distillery duly authorized according to law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds not being an authorized distiller, did by distillation or other process separate the alcoholic spirits from fermented mash, wort or wash, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds without rectifying purifying and refining distilled spirits, did by mixing such spirits, wine, or other liquor with other material, manufacture a spurious imitation or compound liquor for sale under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine spirits, or some other name to the grand jury unknown, without having first paid the
8 special tax as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place aforesaid, and within the jurisdiction aforesaid, the said George Pounds unlawfully did carry on the business of a retail liquor dealer without having first paid the special tax as required by law, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

EMMET O'NEAL,
United States Attorney.

9 (Endorsed:) Witnesses: J. F. Creen, J. W. Barker, J. A. Barker, S. C. Zaner. We, the jury, find the defendant guilty as charged in the 6th count of the indictment. John R. Rockett, foreman.

10 Further endorsed: In the U. S. district court. No. 870. United States vs. George Pounds. Sec. 3258. Violating revenue laws. A true bill. Chambers McAdory, foreman of grand jury. Filed in open court this 26th day of September, 1895. N. W. Trimble, clerk.

11

THURSDAY MORNING, *March 12th*, 1896.

Court met pursuant to adjournment.

Present: The Hon. John Bruce, judge, presiding; Emmet O'Neal, United States attorney; Lee Cowart, assistant district attorney; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

UNITED STATES }
vs. } 870. Illicit Distilling.
GEORGE POUNDS. }

For good cause shown to the court, it is ordered that this cause be, and the same is hereby, reset for Monday next, March 16th.

12

WEDNESDAY MORNING, *March 18th*, 1896.

Court met pursuant to adjournment.

Present: The Hon. John Bruce, district judge, presiding; Emmet O'Neal, Esqr., V. Lee Cowart, assistant U. S. attorney; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

UNITED STATES }
vs. } No. 870. Illicit Distilling.
GEORGE POUNDS. }

Upon motion of defendant, it is ordered by the court that this cause be, and the same is hereby, continued until the next term of court.

13 UNITED STATES OF AMERICA:

Northern District of Alabama, Southern Division, September Term, 1896.

Pleas had at a regular term of the district court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-room, in the city of Birmingham, in said division of the said district, the first Monday of September, it being the seventh day thereof, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twenty-first year.

Present: Hon. Emmet O'Neal, U. S. attorney; Lee Cowart, Esqr., assistant U. S. att'y; J. C. Musgrove, U. S. marshal, by his deputy, Robert Barber; N. W. Trimble, clerk, and E. T. Broadway, chief deputy clerk.

After the court had been regularly opened by Robert Barber, deputy marshal, the following order, which had been received from the district judge, Hon. John Bruce, was read and filed in open court, to wit:

Ordered that the circuit and district courts of the United States for the southern division of the northern district of Alabama be,

and the same are hereby, adjourned from the first Monday of September, 1896, to the Monday, November 23, 1896.

July 13th, 1896.

(S'g'd)

JOHN BRUCE, *Judge.*

Endorsed: Filed in open court this the 7th day of September, 1896. N. W. Trimble, clerk.

Thereupon court adjourned until Monday, the 23 day of November, 1896, at 12 m.

14

SATURDAY MORNING, *November 28th, 1896.*

Court met pursuant to adjournment.

Present: The Hon. Aleck Boorman, judge of the district courts of the United States for the western district of Louisiana, sitting and presiding under the order of designation and appointment by the circuit judge; Emmet O'Neal, Esqr., U. S. attorney; V. Lee Cowart, assistant U. S. attorney; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

UNITED STATES	}	No. 870. Illicit Distilling.
<i>vs.</i>		
GEORGE POUNDS.		

Comes the United States, by district attorney, and also comes the defendant, by his attorneys and in his own proper person, and after being duly arraigned upon the indictment filed herein against him, and after having heard the same read over to him pleads not guilty.

Thereupon, to try the issues joined, comes a jury of good and lawful men, to wit, John R. Rockett and eleven others, who were duly elected, tried, and sworn upon their oaths to try the issues herein joined, and a true verdict to render according to the evidence and the law as it may be given to them by the court.

UNITED STATES	}	No. 870. Illicit Distilling.
<i>vs.</i>		
GEORGE POUNDS.		

In this cause, the jury being about to retire and it being now a late hour at night, it is agreed to by counsel for both parties, in open court and in the presence of the defendant, that the jury trying this cause may, through their foreman, write their ver-

dict upon the back of the indictment filed herein, put the same into an envelope, and after sealing the same to address and deliver it to the clerk of the court to be opened Monday morning in open court, and it is hereby so ordered.

UNITED STATES	}	No. 870. Illicit Distilling.
<i>vs.</i>		
GEORGE POUNDS.		

Ordered by the court that the marshal do furnish supper to the jury trying this cause, and that the expense therefor be paid by the

said marshal out of any funds available in his hands for that purpose.

Ordered by the court that this court do remain in recess until the rendition of a sealed verdict in the case No. 870, of The United States vs. George Pounds, as heretofore directed.

UNITED STATES }
vs. } No. 870. Illicit Distilling.
GEORGE POUNDS. }

Ordered by the court that the defendant herein be taken into custody by the marshal and committed to await the rendition and opening of the sealed verdict as heretofore directed.

UNITED STATES }
vs. } No. 870. Illicit Distilling.
GEORGE POUNDS. }

Comes the jury in this cause and renders a sealed verdict in this cause in a manner as directed by an order of the court heretofore made in said cause.

16

MONDAY MORNING, November 30th, 1896.

UNITED STATES }
vs. } No. 870. Illicit Distilling.
GEORGE POUNDS. }

The jury trying this cause having rendered a sealed verdict in the cause as directed by a former order of court made herein, and the defendant being present in open court, it is ordered that the said verdict be opened and published, which is accordingly done in the presence of said defendant and the jury trying said cause. The same reads as follows, to wit:

"We, the jury, find the defendant guilty as charged in the 6th count of the indictment.

JOHN R. ROCKETT, *Foreman.*"

UNITED STATES }
vs. } 870. Illicit Distilling.
GEORGE POUNDS. }

Ordered by the court that the defendant herein be remanded to the custody of the marshal and committed to await the judgment and sentence of the court to be pronounced upon him.

17

Motion in Arrest of Judgment.

UNITED STATES }
vs. }
GEORGE POUNDS. }

Now comes the defendant after the rendition of the verdict of the jury finding him guilty as charged in the 6th count of the indictment.

ment and before judgment and sentence, and moves the court to arrest the judgment in this case, upon the ground that the said sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant.

W. H. SMITH,
Attorney for Defendants.

18 Endorsed: No. 870. United States *vs.* George Pounds.
 Motion in arrest of judgment. Filed December 14, 1896.
N. W. Trimble, clerk.

19 *Amendment to Motion in Arrest of Judgment.*

UNITED STATES }
 vs.
GEORGE POUNDS. }

By leave of the court first had and obtained the defendant amends his motion in arrest of judgment by adding the following grounds:

1st. The said 6th count of the indictment fails to show that there was a warehouse provided by law to which the spirits alleged to have been concealed should have been removed.

2nd. That the jury separated before the verdict of the jury was returned into court.

W. H. SMITH,
Attorney for Defendant.

20 Endorsed: No. 870. United States *vs.* George Pounds.
 Amendment to motion in arrest of judgment. Filed December 16th, 1896. N. W. Trimble, clerk.

21 *Submission of Motion in Arrest of Judgment.*

MONDAY MORNING, *December 14th*, 1896.

Court met pursuant to adjournment.

Present: The Hon. Aleck Boorman, judge of the district court of the United States for the western district of Louisiana, sitting and presiding under the order of designation and appointment by the circuit judge; Hon. Emmet O'Neal, U. S. attorney; V. Lee Cowart, Esqr., assistant U. S. attorney; J. C. Musgrove, Esqr., U. S. marshal, by his chief office deputy, J. McKee Gould, and N. W. Trimble, clerk.

UNITED STATES }
 vs.
GEORGE POUNDS. } No. 870. Illicit Distilling.

This cause coming on to be heard upon the defendant's motion in arrest of judgment, and after being argued by counsel *pro* and *con.*, was submitted to the court for its consideration.

Order Overruling Motion in Arrest of Judgment.

SATURDAY MORNING, December 19th, 1896.

In this cause, the motion of the defendant, as amended, in arrest of judgment having heretofore been argued and submitted, it is now, after due consideration thereof, ordered by the court that the said motion be, and the same is hereby, overruled.

22

Sentence and Judgment.

SATURDAY MORNING, December 19th, 1896.

UNITED STATES	}	No. 870. Illicit Distilling.
vs.		
GEORGE POUNDS.		

The defendant herein having on a former day of this court been convicted, and he being now present in open court, and upon being asked by the court if he has anything to say why the judgment and sentence of the court should not be pronounced upon him says nothing, it is therefore ordered by the court that the said defendant, George Pounds, be imprisoned in the common jail of Jefferson county for the period of six months, to be computed and commenced from November 30th, 1896, and that he pay a fine of one hundred dollars and the costs of this prosecution, for which execution may issue.

UNITED STATES	}	870. Illicit Distilling.
vs.		
GEORGE POUNDS.		

Upon motion of the defendant's attorney, it is ordered by the court that the supersedeas bond in this cause be, and the same is hereby, fixed in the amount of \$2,000.00, two thousand dollars.

23

Defendant's Bill of Exceptions.

Be it remembered that the cause of The United States vs. George Pounds coming on to be heard in the district court of the United States for the southern division of the northern district of Alabama, Hon. Aleck Boorman, district judge, present and presiding, the following proceedings, among other things, not otherwise appearing of record, were had, to wit:

After the rendition of the verdict of guilty, as shown by the record, and before the judgment and sentence, the defendant moved the court in arrest of judgment upon the grounds set out in the motion filed December 14th, 1896, and the amendment thereto filed December 16th, 1896; which motion and amendment are hereby referred to and made a part of this bill of exceptions.

Upon the hearing of said motion, which was prior to the judgment and sentence, the court overruled the said motion as amended,

and the defendant then and there duly excepted to such ruling and action of the court in overruling said motion.

Signed and seal- this 23 day of December in open court and made a part of the record in said cause.

ALECK BOARMAN, *Judge.*

24 Endorsed: No. 870. United States vs. George Pounds.
Defendant's bill of exceptions. Filed December 23rd, 1896.
N. W. Trimble, clerk.

25 *Petition for Writ of Error and Assignment of Error.*

To the Hon. Aleck Boorman, judge:

Your petitioner, George Pounds, respectfully shows that he was convicted at the present term of the court of concealing spirits which had been removed to a place other than the warehouse provided by law, and that he has an exception reserved to the ruling of the court upon motion in arrest of judgment. Wherefore he prays that a writ of error be allowed him, transferring the cause to the Supreme Court of the United States, that the said Supreme Court may review the action of this court, and petitioner assigns as error the ruling of the court in overruling petitioner's motion in arrest of judgment.

GEORGE POUNDS.

W. H. SMITH, *Attorney.*

Allowed.

26 Endorsed: No. 870. The United States vs. George Pounds.
Petition for writ of error and assignment of error. Filed in
open court this the 23rd day of December, 1896. N. W. Trimble,
clerk.

27 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judge of the district court of the United States for the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you or some of you, between The United States of America and George Pounds, a manifest error hath happened, to the great damage of the said George Pounds, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., on the 3rd Monday of January, 1897, in the said Supreme Court of the United States, to

be then and there held, *and*, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

28 Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 23rd day of December, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] N. W. TRIMBLE,
Clerk of the U. S. Circuit Court, Nor. District of Ala., Sou. Div.

Allowed by—

ALECK BOARMAN, Judge.

A true copy.

[SEAL.]

N. W. TRIMBLE, Clerk.

29 Endorsed: No. 870. Writ of error. Filed December 23, 1896. N. W. Trimble, clerk.

30 UNITED STATES OF AMERICA:

The President of the United States, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at Washington, D. C., on the 3rd Monday of January, 1897, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the southern division of the northern district of Alabama, wherein George Pounds is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done *in* the parties in that behalf.

Witness the Honorable Aleck Boorman, presiding as judge of the district court of the United States for northern dist. of Alabama, this 23 day of December, in the year of our Lord one thousand eight hundred and ninety-six.

ALECK BOARMAN, Judge.

31 Endorsed: I hereby accept service of the within citation and copy thereof this day received. December 31, 1896. Emmet O'Neal, U. S. attorney, by Lee Cowart, ass't dist. attorney.

32 Further endorsed: No. 870. Citation. Filed December 31, 1896. N. W. Trimble, clerk.

33 *Bail Bond on Writ of Error.*

U. S. District Court, Northern District Alabama, Southern Division.

Know all men by these presents that we, George H. Pounds, as principal, and A. A. Pounds and J. W. A. Deese, A. M. Turner,

T. M. Deese, and J. I. Burgess, as sureties, are held and firmly bound unto the United States of America for the sum of two thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 28th day of December, in the year one thousand eight hundred and ninety-six.

The condition of this obligation is such that whereas, on the 19th day of December, anno Domini 1896, by the consideration of the district court of the said United States for the northern district of Alabama, southern division, in a certain criminal cause, to wit, a certain indictment against the above-named George H. Pounds for concealing spirits for which the tax had not been paid, removed to a place other than the distillery warehouse provided by law, being criminal cause number 870 in the court, the said George Pounds was tried by jury and found guilty of the offense charged in said indictment in said cause, and was thereupon adjudged and sentenced to imprisonment for a term of six months in jail, in the State of Alabama;

And whereas, upon petition of the said George H. Pounds, the Hon. Aleck Boarman, district judge of the said United States, who held said term of said court at which such conviction was had in the northern district of Alabama, at Birmingham, within his district, has allowed a writ of error from the Supreme Court of the United States to the said district court upon the judgment and sentence aforesaid, and has ordered that such writ of error operate as to stay to proceedings under the said judgment and sentence; and whereas the said George H. Pounds has sued out such writ of error, and which has been issued accordingly, and upon which a citation has been issued and served upon the United States, and the said George H. Pounds has, by order of the Honorable Aleck Boarman, who held said term of the said district court, been admitted to bail pending said writ of error in the sum of \$2,000:

Now, if the said George H. Pounds shall be and personally appear before the said district court on the first day of the next regular term thereof, to be held at the United States court-house, at Birmingham, in said southern division of the said district, on the first Monday of March next, and from day to day thereafter during that and subsequent terms until the determination of the said writ of error, and shall not, at any of the terms of said district court, depart the court without leave thereof (shall prosecute his writ of error with effect and without delay), and shall, in case the judgment and sentence aforesaid is affirmed, surrender himself to the custody of the marshal of the said United States for the northern district of Alabama aforesaid, and abide by the judgment and orders of the court, and, if the said Supreme Court of the United States shall reverse the judgment and sentence of the said district court, he shall appear in

said district court until discharged by law, then this obligation shall be void ; otherwise remain in full force and effect.

A. A. POUNDS.	[L. S.]
J. W. A. DEESE.	"
A. M. TURNER.	"
T. M. DEESE.	"
J. I. BURGESS.	"

35 I, J. W. A. Deese, as surety on the annexed bond, being duly sworn, *depe* depose and say that I am worth in real estate in the northern district of Alabama the amount of one thousand dollars over and above all just debts and liabilities and legal exceptions under the constitution and laws of the State of Alabama.

I further state that I am not indemnified from liability by the accused or by any one else to sign this bond, but I sign the same without indemnity or collateral security of any kind or character.

J. W. A. DEESE.

Subscribed and sworn to before me this 28th day of December, 1896.

C. M. COGGIN,
Notary Public. [SEAL.]

[SEAL.]

I, A. M. Turner, a surety on the annexed bond, being duly sworn, *depe* depose and say that I am worth in real estate in the northern district of Alabama the amount of five hundred dollars over and above all just debts and liabilities and legal exceptions under the constitution and laws of the State of Alabama.

I further state that I am not indemnified from liability by the accused or by any one else to sign this bond, but I sign the same without indemnity or collateral security of any kind or character.

A. M. TURNER.

Subscribed and sworn to before me this 28th day of December, 1896.

[SEAL.]

C. M. COGGIN,
Notary Public.

36 I, A. A. Pounds, a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate in the northern district of Alabama the amount of two thousand dollars over and above all just debts and liabilities and legal exceptions and under the constitution and laws of the State of Alabama.

I further state that I am not indemnified from liability by the accused or by any one else to sign this bond, but I sign the same without indemnity or collateral security of any kind or character.

A. A. POUNDS.

Subscribed and sworn to before me this 28th day of December, 1896.

[SEAL.]

C. M. COGGIN,
Notary Public.

I, J. I. Burgess, a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate in the northern district of Alabama the amount of two thousand dollars over and above all my just debts and liabilities and legal exceptions under the constitution and laws of the State of Alabama.

I further state that I am not indemnified from liability by the accused or by any one else to sign this bond, but I sign the same without indemnity or collateral security of any kind or character.

J. I. BURGESS.

Subscribed and sworn to before me this 28th day of December, 1896.

[SEAL.]

C. M. COGGIN,
Notary Public.

Approved December 30th, 1896.

ALECK BOARMAN, *Judge.*

37 Endorsed: No. 870. The United States vs. George Pounds. Bail bond pending writ of error. Filed 31 day of December, 1896. N. W. Trimble, clerk.

38 I, N. W. Trimble, clerk of the district court of the United States for the southern division of the northern district of Alabama, hereby certify the foregoing pages, numbered 1 to 37, inclusive, to be a full, true, complete, and correct transcript of the record and proceedings in the case of The United States *versus* George Pounds, lately pending and determined in the said district court, as the same now appears of record and on file in my office.

In witness whereof I hereunto subscribe my name and cause the seal of the said district court to be affixed this the 16th day of January, A. D. 1897.

[Seal District Court U. S., N. D. of Ala., Sou. Div.]

N. W. TRIMBLE,
Clerk U. S. District Court, Nor. Dist. of Ala., Sou. Div.

39 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judge of the district court of the United States for the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you or some of you, between The United States of America and George Pounds, a manifest error hath happened, to the great damage of the

said George Pounds, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 3d Monday of January, 1897, in the said Supreme Court of the United States to be then and there held, and, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 23rd day of December, in the year of our Lord one thousand eight hundred and ninety-six.

N. W. TRIMBLE,
Clerk of the U. S. Circuit Court, Nor. Dist.
of Alabama, Southern Division.

Allowed by—
ALECK BOARMAN, *Judge*.

[Endorsed:] Geo. Pounds, pl'ff in error, vs. The United States, d'ft in error. Writ of error.

40 UNITED STATES OF AMERICA, ss:

The President of the United States to The United States of America, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at Washington, D. C., on the 3d Monday of January, 1897, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the southern division of the northern district of Alabama, wherein George Pounds is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Aleck Boorman, presiding as judge of the district court of the United States for the northern district of Alabama, this 23rd day of December, in the year of our Lord one thousand eight hundred and ninety-six.

ALECK BOARMAN, *Judge*.

41 [Endorsed:] Geo. Pounds, pl'ff in error, vs. The United States, d'ft in error. Citation. Filed Dec'r 31, 1896. N. W. Trimble, clerk.

I hereby accept service of the within citation, & copy thereof this day received.

December 31, 1896.

EMMET O'NEAL,

U. S. Attorney,

By LEE COWART,

Ass't U. S. Attorney.

42 [Endorsed:] No. —. U. S. Supreme Court. George Pounds, pl'ff in error, *vs.* The United States, d'f't in error.

Endorsed on cover: Case No. 16,483. N. Alabama D. C. U. S. Term No., 298. George Pounds, plaintiff in error, *vs.* The United States. Filed February 1, 1897.

N^o. 298.

Brief of Smith for P. E.

Roberts, Printer, B'ham.

SEP 20 1897

JAMES H. MCKENNEY,

CLERK

Filed Sept. 20, 1897.

In the United States Supreme Court

No. 298—OCTOBER TERM, 1897.

GEORGE POUNDS, Plaintiff in Error,

vs.

THE UNITED STATES.

BRIEF OF J. A. W. SMITH, ATTORNEY FOR
PLAINTIFF IN ERROR.

THE FACTS.

The indictment under which the defendant (plaintiff in error) was convicted contains fifteen counts. (Record, pp. 2-4.)

He is charged with running an illicit distillery, and each count of the indictment, no doubt, intended to charge some offense growing out of, or connected with, such a distillery. The fact is not shown by the record in this case, but I do not deem it improper to state here, that the evidence showed that the distillery which the defendant was charged to have been connected with was an illicit one—a "wild-cat" still, pure and simple.

The jury returned a verdict of guilty under the *sixth* count

of the indictment, and defendant was sentenced to six months' imprisonment and fined one hundred dollars.

That count reads as follows :

The grand jurors aforesaid, upon their oaths aforesaid, do further present, that, at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States. (Record, p. 3.)

The charge was intended to cover a case arising under section 3296 of the Revised Statutes.

After verdict, the defendant moved the court, in arrest of judgment, upon the following grounds, to-wit :

"That the said sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant" (record, pp. 7-8), and upon the further grounds, added by amendment (record, p. 8) : 1. "The said sixth count of the indictment fails to show that there was a warehouse provided by law to which the spirits alleged to have been concealed should have been removed." 2. "That the jury separated before the verdict of the jury was returned into court."

The overruling of this motion (record p. 9) is assigned as error, record p. 10. The bill of exceptions (pp. 9 and 10 of record) also shows the motion overruled and the exception.

BRIEF.

1. It seems clear that section 3296 of the Revised Statutes intended to provide a punishment for a distiller who had complied with the various provisions of chapter four of the Revised Statutes, and had provided a warehouse as required by section 3271, and then concealed or aided in the concealment of distilled spirits which had been removed, the tax not having been paid, to a place other than the distillery warehouse so provided. No warehouse is provided for the storage of *illicit* spirits to be kept until the tax is paid; in fact there is no tax due on such spirits. Section 3296 was intended to punish offenses growing out of misconduct in connection with *legally* distilled spirits. Section 3289 provides the penalty for concealing *illicit* spirits.

The indictment does not inform the defendant that a warehouse was provided in which the spirits he is alleged to have concealed should have been stored until the tax was paid. It does not allege that any tax was due. It is too uncertain to sustain the judgment.

Pettibone vs. United States, 148 U. S. 197.

United States vs. Hess, 124 U. S. 483.

An omission of matters of substance in an indictment is not aided or cured by verdict.

United States vs. Hess, 124 U. S. 483.

2. The judgment should have been arrested because the jury made their verdict, sealed it and handed it to the clerk on Saturday and it was not opened by him until Monday. (Record pp. 6 and 7.) From the orders of the court it is fair to presume that the jury separated before the verdict was read. It was not

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within the power of the defendant or his counsel to waive his right to have the jury kept together until they returned their verdict.

Lewis vs. United States, 146 U. S. 370.

Separation is not allowed, in any case, after the jury retire to find their verdict, until it is found and delivered in open court.

12 Am. and Eng. Encyclopedia of Law, p. 375.

J. A. W. SMITH,
Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

GEORGE POUNDS, PLAINTIFF IN ERROR, }
v. } No. 298.
THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ALABAMA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The plaintiff in error was convicted on the sixth count of the indictment, which reads as follows (Rec., p. 3):

The grand jurors aforesaid, upon their oaths aforesaid, do further present that at the time and place and within the jurisdiction aforesaid the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed

to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

The indictment charges the date of the offense on the 1st day of July, A. D. 1895, in the southern division of the northern district of Alabama, and within the jurisdiction of said court, in the county of Cleburne.

This count in the indictment is drawn under section 3296 of the Revised Statutes, which reads as follows:

Whenever any person removes, or aids or abets in the removal of any distilled spirits on which the tax has not been paid, to a place other than the distillery warehouse provided by law, or conceals, or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of any distilled spirits from any distillery warehouse or other warehouse for distilled spirits authorized by law, in any manner other than is provided by law, or conceals, or aids in the concealment of any spirits so removed, he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than two hundred nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

The judgment of the court was that the plaintiff in error, "George Pounds, be imprisoned in the common jail of Jefferson County for the period of six months, to be computed and commence from November 30th, 1896, and that he pay a fine of one hundred dollars and the costs of this prosecution, for which execution may issue." (Rec., p. 9.)

After the verdict, and before the judgment, the plaintiff in error filed his motion in arrest of judgment as follows (Rec., pp. 7, 8):

Now comes the defendant after the rendition of the verdict of the jury finding him guilty as charged in the 6th count of the indictment and before judgment and sentence, and moves the court to arrest the judgment in this case, upon the ground that the sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant.

Afterwards an amended motion in arrest of judgment was filed, as follows (Rec., p. 8):

By leave of the court first had and obtained the defendant amends his motion in arrest of judgment by adding the following grounds:

First. The said sixth count of the indictment fails to show that there was a warehouse provided by law to which the spirits alleged to have been concealed should have been removed.

Second. That the jury separated before the verdict of the jury was returned into court.

POINTS AND ARGUMENT.

It is not deemed necessary to detain the court for a consideration of the grounds set forth in the amended motion. There is nothing in the record to show that the jury separated before the verdict was returned into court, but the record does show that a sealed verdict was returned by the jury by agreement of counsel for both parties in open court and in the presence of the defendant.

As to the first ground in the amended motion, the charge is that the spirits concealed were spirits which had been

removed to a place other than the distillery warehouse provided by law. It was not necessary to either allege or prove under this charge that there was a distillery warehouse to which the spirits ought to have been removed. The gist of this offense is the removal of untax-paid spirits in a manner otherwise than is required by the provisions of the internal-revenue laws. These laws require distilled spirits from the stills to be run into what are called cistern rooms, which are under the custody of the storekeeper and gauger assigned to the distillery, and which are secured by a lock to which he has the key. The spirits, when produced and run into the cistern room, are required to be taken, under the supervision of the storekeeper and gauger, and deposited in the distillery warehouse provided by law, and there gauged and marked by him and reported upon a prescribed form to the collector. Upon proper withdrawal papers sent up by the distiller, stamps are issued, to be affixed to the packages to denote the payment of the stamp tax on the spirits, and after the affixing of such stamps the spirits can be removed from the warehouse by the distiller. Now, it is to prevent a violation of this law that it was made an indictable offense to remove spirits upon which the tax had not been paid to a place other than a distillery warehouse provided by law, and it was also denounced as a crime to conceal, or to aid in the concealment of, spirits on which the tax had not been paid, which said spirits had been removed to a place other than a distillery warehouse provided by law.

The removal of distilled spirits on which the tax has not been paid to any place other than a distillery ware-

house provided by law is unlawful, and to conceal or aid in the concealment of distilled spirits so removed is also unlawful. So the omission to set forth in the indictment that there was a warehouse provided by law, to which the spirits alleged to have been concealed should have been removed, does not constitute a defect. The law requires that there should be a warehouse, and no distillery can be legally operated without a warehouse. When a distillery is shown to be in existence, the law presumes that it is complete, as required by the statutes.

This leaves the case, then, to be considered upon the question raised in the motion in arrest of judgment, viz, "that the sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant."

The attorney for the plaintiff in error, in setting forth his grounds in arrest of judgment, did not enlighten the court as to wherein the vagueness and uncertainty existed. The only possible objection which could be urged to the count upon which the plaintiff in error was convicted is the fact that it charges that he did unlawfully conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed to a place other than the distillery warehouse provided by law.

Now it is true that it would have been better form to have charged the concealment in one count, and aiding in the concealment in another, but the joinder of the two charges in one count is not repugnant, and does not come within the rule that a count in an indictment which charges two distinct, independent offenses is bad.

Although these two offenses appear by the use of the disjunctive in the statute, they are in fact but one offense, and may be stated conjunctively in one count.

Where a person is charged with doing a thing which constitutes an offense, and causing it to be done, it is sufficient to charge both in one count, it being held that it is the same thing in law to cause a thing to be done as to do it.

Bishop's New Crim. Proc., Vol. 1, sec. 434, p. 268; *United States v. Nunnemacher*, 7 Bissell, 129; see also *United States v. Blaisdell*, 9 Int. Rev. Rec., 82.

JAS. E. BOYD,
Assistant Attorney-General.

Statement of the Case.

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POUNDS v. UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF ALABAMA.

No. 298. Submitted May 6, 1898. — Decided May 28, 1898.

An indictment under Rev. Stat. § 3296, for the concealment of distilled spirits on which the tax has not been paid, removed to a place other than the distillery warehouse provided by law, which charges the performance of that act at a particular time and place, and in the language of the statute, is sufficiently certain.

When there is nothing in the record to show that the jury in a criminal case separated before the verdict was returned into court, and the record shows that a sealed verdict was returned by the jury by agreement of counsel for both parties in open court, and in the presence of the defendant, the verdict was rightly received and recorded.

THE indictment under which the defendant (plaintiff in error) was tried contained fifteen counts. He was convicted on the sixth count, which read as follows:

“The grand jurors aforesaid, upon their oaths aforesaid, do further present, that, at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.”

The count was drawn under section 3296 of the Revised Statutes, which provides that —

“Whenever any person removes, or aids or abets in the removal of any distilled spirits on which the tax has not been paid, to a place other than the distillery warehouse provided by law, or conceals, or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of any distilled spirits from any distillery warehouse or other warehouse for distilled spirits authorized by law, in any manner other than is provided by law, or conceals, or aids

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in the concealment of any spirits so removed, he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than two hundred nor more than five thousand dollars, and imprisoned not less than three months nor more than three years."

After the verdict, and before the judgment, the plaintiff in error filed his motion in arrest of judgment, as follows:

"Now comes the defendant after the rendition of the verdict of the jury finding him guilty as charged in the sixth count of the indictment and before judgment and sentence, and moves the court to arrest the judgment in this case, upon the ground that the sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant."

Afterwards an amended motion in arrest of judgment was filed, as follows:

"By leave of the court first had and obtained the defendant amends his motion in arrest of judgment by adding the following grounds:

"First. The said sixth count of the indictment fails to show that there was a warehouse provided by law to which the spirits alleged to have been concealed should have been removed.

"Second. That the jury separated before the verdict of the jury was returned into court."

The overruling of this motion was assigned as error.

Mr. J. A. W. Smith for plaintiff in error.

Mr. Assistant Attorney General Boyd for defendants in error.

MR. JUSTICE McKENNA, after stating the case, delivered the opinion of the court.

Section 3271 of the Revised Statutes provides that "every distiller shall provide, at his own expense, a warehouse, to be

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situated on and to constitute a part of his distillery premises, and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall be paid; . . . and such warehouse, when approved by the Commissioner of Internal Revenue on report of the collector, is hereby declared a bonded warehouse of the United States, to be known as a distillery warehouse, and shall be under the direction and control of the collector of the district and in charge of an internal revenue storekeeper assigned thereto by the Commissioner."

Section 3287 provides that all distilled spirits shall be drawn from the receiving cisterns into casks of a designated capacity and the quantity of spirits marked thereon, "and shall be immediately removed into the distillery warehouse," and stamps designating the quantity of spirits shall be applied thereto.

Other sections provide that no distilled spirits upon which the tax has been paid shall be stored or allowed to remain on any distillery premises, and such spirits found in a cask containing five gallons or more without having the stamp required by law shall be forfeited.

To secure the enforcement of this provision, section 3296 was enacted.

Plaintiff in error says:

"It seems clear that section 3296 of the Revised Statutes intended to provide a punishment for a distiller who had complied with the various provisions of chapter four of the Revised Statutes, and had provided a warehouse as required by section 3271, and then concealed or aided in the concealment of distilled spirits which had been removed, the tax not having been paid, to a place other than the distillery warehouse so provided."

And it hence claimed that the indictment is too uncertain to sustain the judgment, because it does not inform the defendant that a warehouse was provided in which the spirits which he is charged to have concealed should have been stored until the tax was paid. Undoubtedly, the statute was intended to punish a distiller who violated its provisions. It was also intended to punish any one else who did, and the

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offence could be committed by a removal of spirits from the premises before storage in the distillery warehouse or by concealment of the spirits so removed. And it is this concealment which the indictment charges, and it sufficiently alleges the existence of a warehouse. It also alleges that the tax had not been paid. The offence was purely statutory. In such case it is generally sufficient to charge the defendant with acts coming within the statutory description in the substantial words of the statute without any further expansion of the matter. *United States v. Simmons*, 96 U. S. 360; *United States v. Britton*, 107 U. S. 655.

One of the acts which is made an offence by section 3296 is the concealment of distilled spirits on which the tax has not been paid, removed to a place other than the distillery warehouse provided by law. The indictment charges in the language of the statute the performance of that act at a particular time and place. It was therefore sufficiently certain.

As to the second ground of motion in arrest of judgment, it is enough to say that there is nothing in the record to show that the jury separated before the verdict was returned into court, but the record does show that a sealed verdict was returned by the jury by agreement of counsel for both parties in open court and in the presence of the defendant. This verdict was rightly received and recorded. *Commonwealth v. Carrington*, 116 Mass. 37.

The judgment is

Affirmed.